FILE COPY.

Supreme Court U. S.
FILED
APR 30 1903
Clerk.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1902, No. 266.

ESTHER S. BUCHANAN ET AL.,
Plaintiffs in Error,

vs.

LAURA PATTERSON ET AL.,
Defendants in Error.

In Error to the Court of Appeals of Maryland.

SUPPLEMENTAL BRIEF OF PLAINTIFFS IN ERROR.

ARCHIBALD H. TAYLOR,
R. P. KEECH, JR.,
JOHN PEIRCE BRUNE,
For Plaintiffs in Error.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1902, No. 266.

ESTHER S. BUCHANAN ET AL.,
Plaintiffs in Error,

vs.

LAURA PATTERSON ET AL.,
Defendants in Error.

In Error to the Court of Appeals of Maryland.

SUPPLEMENTAL BRIEF OF PLAINTIFFS IN ERROR.

I.

THE CASE OF ANGLE VS. RAILWAY COMPANIES, 151 U. S. PAGE 1, REINFORCED BY FARMERS LOAN AND TRUST COMPANY VS. RAILWAY COMPANIES, 163 U. S., PAGE 31, EXPRESSLY REAFFIRMS THE RULE IN FLETCHER VS. PECK, 6 CRANCH, 87, THAT A THIRD PARTY CANNOT WREST OR DIVERT A LEGISLATIVE GRANT, AND MUCH LESS A LEGISLATIVE DONATION, TO ANY OTHERS THAN THE DESIGNATED GRANTEE OR DONEE.

The first-mentioned case is upon none of the briefs, and was handed by counsel for defendants in error to counsel for plaintiffs in error after arriving in this Court. To distinguish it

from the case at bar is probably a superfluous duty. It arose upon demurrer and the conceded facts were, that Angle, the plaintiff, had partially, if not substantially, earned the right to certain lands granted by the State of Wisconsin, for a consideration, to the Portgage Company, when the Omaha Company acquired or absorbed the Portgage Company bodily, by buying up all its capital stock and all its officers, caused the latter company fraudulently to break its contract with Angle, and fraudulently to relinquish its rights to its lands to the State, which at the instance of the conspirators controlling the Omaha and Portgage Companies in pursuance of the scheme of fraud, were then granted to the Omaha Company,

Angle secured a judgment for the wrong done him against the Portgage Company, and filed his bill thereon against the Omaha Company, to subject the lands and other assets thus fraudulently acquired by it from the Portage Company.

Said the Court in effect: The wrongs were done Angle and his claim accrued thereon against the Omaha and Portage Companies before the Legislature revoked its grant. The Omaha Company has become practically the Portage Company by the absorption of all its capital stock (as has been expressly decided in Maryland), and it must respond to its creditors, and account for its assets, whether eloigned or re-obtained, via. the Legislature.

It was analagous to subjecting an after-acquired title to make good a liability with respect to a former defective one.

It must be observed, that the Court in that case was dealing with property-rights actually vested, and actual frauds concerning the same, between the parties, not as here, with gratuities, which are never property rights, except in the very person of the designated donee, and where no charge of fraud has been suggested by the record. And the Court delivering its opinion by Mr. Justice Brewer, particularly quoted and re-affirmed the opinion of Chief Justice Marshall in Fletcher vs. Peck, 6 Cranch, that title given by the Legislature cannot be collaterally challenged by a third party, and for itself said, that "it

would not be seemly for either of the three departments to be instituting an inquiry as to whether another acted *wisely, intelligently* or *corruptly*."

And when this case was tried on the merits, it maintained the title of the Omaha Company to the lands in question, saying that "whatever the Legislature might thereafter do in its behalf, was an act of grace."

See—Angle vs. Railway Companies, 151 U. S. page 19.
Farmers L. & T. Co. vs. Railway Companies, 163 U. S. 47.

II.

THE EXPRESS TERMS OF THE ACT MAKING THESE APPROPRIATIONS, PRECLUDE ALL POSSIBILITY THAT THE NEXT OF KIN OF ANY OTHER PERSONS THAN THE INTESTATE EXPRESSLY DESIGNATED IN THE ACT, CAN CLAIM THE SUMS GIVEN BY THE ACT TO THE ADMINISTRATOR OF SUCH INTESTATE NAMED THEREIN, IN ANY PLACE, OR IN ANY COURT, THEREAFTER.

The Court of Appeals of Maryland suggested, when considering the language of this Court in Blagge vs. Balch, that after the Court of Claims had made its advisory report to Congress "Congress might confide the money to the administrators, trusting that they and the Courts of which they were officers or agents will distribute the fund among the next of kin of the original claimants," and that this imposed upon such Court the duty of determining who were the original claimants, and such Court was perfectly free to determine that such claimants were others than the next of kin of the intestate named in the Act, and the representative of the intestate named in the Act could thus be treated as a mere trustee for persons other than the next of kin of his intestate.

Certainly the language of Blagge vs. Balch, never meant to intimate, that the Courts so "*trusted*" would distribute the funds among others than the next of kin of the claimants designated as the true or original claimants by the terms of the Act of Appropriation. This becomes as clear as crystal upon

a glance at the terms of the Act of Appropriation, from the provision that the award "shall not be paid until the Court of Claims shall certify to the Secretary of the Treasury that the personal representatives on whose behalf the award is made, represent the next of kin."

Now if the several Courts of the States were at liberty thereafter to determine who were the original sufferers entitled to be reimbursed for these losses, how would it be possible for the Court of Claims to give the certificate "that the personal representative on whose behalf the award was made represented the next of kin." Next of kin of whom? Of unknown persons yet to be discovered, ascertained, and designated by the Courts of the several States? Clearly, it would be impossible for the Court of Claims to perform this duty, whose performance has been declared by this Court to be "final and conclusive," unless the particular persons to whose next of kin Congress intended and desired to give this money, had already been ascertained or designated by the Act of Appropriation. The provision requiring this certificate is conceded to be made for the purpose of preventing this money from being diverted, by proceedings in Court or any other proceedings whatsoever, from the next of kin of those persons whom the Act has thus designated, necessarily as the original sufferers, to the next of kin of any other persons whatsoever.

In a word, does not this provision mean, that if the Act of Appropriation gives the award to the administrator of A, the Court of Claims must give a certificate that will insure its distribution to the next of kin of A, and not to the next of kin of B, C, D or any other person whatsoever, who may hereafter set up a claim, more meritorious than that of A, in the opinion of a State Court trying such question at some time thereafter?

ARCHIBALD H. TAYLOR,
E. P. KEECH, JR.,
JOHN PEIRCE BRUNS,
For Plaintiffs in Error.